Supreme Court, U.S.
FILED
AUG 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-91

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

GEORGE BREWSTER,

Petitioner,

v.

THE MOUNT VERNON HOSPITAL, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS ROBERT W. GIDEON AND WILLIAM A. MOORE

DAVID T. STITT
County Attorney

ROBERT LYNDON HOWELL
Senior Assistant County Attorney
4100 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703)691-2421
Counsel of Record for
Respondents Gideon and Moore

QUESTIONS PRESENTED

1. Whether police officers who executed a temporary detention order in accordance with the orders of a magistrate are entitled to good faith immunity from liability under 42 U.S.C. § 1983.

2. Whether the actions of police officers who executed a temporary detention order issued by a magistrate are the proximate cause of subsequent injury allegedly suffered by Petitioner during his hospitalization.

TABLE OF CONTENTS

Page

Table of Authorities..... iii

Opinions Below..... 2

Jurisdiction..... 2

Statement of the Case..... 3

Summary of Argument..... 7

Argument:

I. THE POLICE OFFICERS ARE IMMUNE FROM LIABILITY UNDER 42 U.S.C. § 1983 BECAUSE THEY DETAINED BREWSTER IN GOOD FAITH PURSUANT TO THE ORDERS OF A MAGISTRATE.... 9

II. THE ACTIONS OF THE POLICE OFFICERS WERE NOT THE PROXIMATE CAUSE OF THE INJURY BREWSTER ALLEGEDLY SUFFERED DURING HIS HOSPITALIZATION..... 18

Conclusion..... 19

Appendix A

Opinion of the United States District Court for the Eastern District of Virginia, Alexandria Division

Appendix B

Transcript of the Ruling of the United States District Court for the Eastern District of Virginia

Appendix C

Opinion of the United States Court of Appeals for the Fourth Circuit

TABLE OF AUTHORITIES

Cases: Page

Addington v. Texas,
441 U.S. 418 (1979)..... 13

Anderson v. Creighton,
55 U.S.L.W. 5092
(U.S. June 25, 1987)..... 10, 11, 12

Davis v. Scherer,
468 U.S. 183 (1984)..... 15

Harris v. Pirch,
677 F.2d 681
(8th Cir. 1982)..... 13

Malley v. Briggs,
475 U.S. 335 (1986)..... 10

Martinez v. California,
444 U.S. 277 (1980)..... 19

McKinney v. George,
726 F.2d 1183
(7th Cir. 1984)..... 13, 15

O'Connor v. Donaldson,
422 U.S. 563 (1975)..... 13

Youngberg v. Romeo,
457 U.S. 307 (1982)..... 13

Statutes: Page

42 U.S.C. § 1983..... passim

Va. Code § 37.1-67.1 (1984)..... 12, 14

Va. Code § 37.1-67.1 (Supp. 1987)... 12

Rule:

Fed. R. Civ. P. 56(e)..... 16

No. 87-91

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

GEORGE BREWSTER,

Petitioner,

v.

THE MOUNT VERNON HOSPITAL, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS ROBERT W. GIDEON AND WILLIAM A. MOORE

COME NOW Respondents Robert W. Gideon and William A. Moore, by counsel, and respectfully request that this Honorable Court deny the petition for writ of certiorari seeking review of the opinion

of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia, Alexandria Division, appears as Appendix A hereto.

The transcript of the ruling of the United States District Court for the Eastern District of Virginia appears as Appendix B hereto.

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and appears as Appendix C hereto.

JURISDICTION

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Course of Proceedings

Petitioner George Brewster (hereinafter "Brewster") filed this 42 U.S.C. § 1983 action in the United States District Court for the Eastern District of Virginia on July 23, 1985, against two Fairfax County, Virginia, police officers, Robert W. Gideon and William A. Moore (hereinafter "Gideon" and "Moore"), as well as the Mount Vernon Hospital and a number of doctors and nurses (hereinafter "the health care providers"), and two magistrates.[1/]

1/ The two magistrates were dismissed at the trial court, and Brewster did not appeal that ruling. The district court also granted summary judgment in favor of the health care providers, and the court of appeals affirmed. Brewster's petition for writ of certiorari also seeks to have that decision reviewed. The health care providers have filed a separate brief in opposition to the petition for writ of certiorari.

Brewster alleged that the Respondents had temporarily detained him at the Mount Vernon Hospital for three days and treated him for mental illness, thereby unlawfully depriving him of his rights under the First, Fourth, Sixth, and Fourteenth Amendments. He demanded $2,000,000 in compensatory and punitive damages.

Gideon and Moore filed a motion for summary judgment, arguing that they were entitled to good faith immunity from liability and that their actions were not the proximate cause of the damages Brewster allegedly sustained at the hands of the health care providers. Gideon and Moore filed affidavits in support of their motion. Brewster filed no opposing affidavit. On December 20, 1985, the

district court granted summary judgment in favor of Gideon and Moore, and Brewster appealed that decision to the United States Court of Appeals for the Fourth Circuit.[2/] The court of appeals affirmed the judgment of the district court, ruling that the police officers were entitled to immunity because they had relied in good faith on the orders of a magistrate. Brewster now seeks a

---

2/ The only error assigned by Brewster in his brief to the court of appeals with respect to the dismissal of Gideon and Moore was the district court's finding that the police officers' actions were not the proximate cause of his alleged injury during his hospitalization. Brewster did not appeal the district court's ruling that the police officers were entitled to good faith immunity from liability under 42 U.S.C. § 1983. Obviously, the police officers' good faith immunity would shield them from liability even if their actions had been the proximate cause of Brewster's alleged injury.

writ of certiorari to review that decision.[3/]

Statement of Facts

On July 23, 1983, Brewster telephoned a Fairfax County magistrate and asked that an indecent exposure charge against him be dropped. During the conversation, Brewster stated that he was very depressed and threatened to harm himself. The magistrate called the Fairfax County Police and reported that Brewster had threatened to commit suicide. Police officers were sent to Brewster's house. When they arrived, Brewster was still on the telephone with the magistrate.

3/ Although Brewster filed his Petition for Writ of Certiorari pro se, he was represented by counsel in both the district court and the court of appeals.

The police officers called the magistrate's office from a neighbor's house and confirmed that a civil mental temporary detention order for Brewster would be issued. The officers took Brewster to the Mount Vernon Hospital, where he was examined by the health care providers. The magistrate's oral communication was followed within a few hours by a written detention order. Brewster was hospitalized for three days and discharged after a civil commitment hearing with a diagnosis of schizophrenic disorder, chronic undifferentiated type.

SUMMARY OF ARGUMENT

The district court granted summary judgment in favor of Gideon and Moore on two bases. It held that the police officers were immune from liability under 42 U.S.C. § 1983 for detaining

Brewster because their actions were taken in good faith, and also that the officers' actions were not the proximate cause of the injury that Brewster allegedly suffered after his admission to the hospital. (App. B).

The district court's decision was correct on both bases. The police officers detained Brewster pursuant to the orders of a magistrate and the general orders of the Police Department. Since a reasonable officer could have believed that Brewster's detention was lawful in light of established law and the information the officers possessed at the time, Gideon and Moore are immune from liability under 42 U.S.C. § 1983. Moreover, the health care providers independently decided to subject Brewster to a course

of medication and treatment during his hospitalization. Their actions, and not those of the police officers, were the proximate cause of Brewster's alleged injury. Therefore, the petition for writ of certiorari should be denied.

ARGUMENT

I. THE POLICE OFFICERS ARE IMMUNE FROM LIABILITY UNDER 42 U.S.C. § 1983 BECAUSE THEY DETAINED BREWSTER IN GOOD FAITH PURSUANT TO THE ORDERS OF A MAGISTRATE.

The district court correctly granted summary judgment in favor of Moore and Gideon on the basis that they were entitled to good faith immunity because Brewster was detained pursuant to the orders of the magistrate and the general orders of the police department.

Law enforcement officers are entitled to qualified immunity from liability

under 42 U.S.C. § 1983 for allegedly unconstitutional searches or arrests. This Court has established the standard of "objective legal reasonableness" to determine the extent of that immunity. Anderson v. Creighton, 55 U.S.L.W. 5092, 5093 (U.S. June 25, 1987); Malley v. Briggs, 475 U.S. 335, 341 (1986). An officer loses the shield of immunity only if a given search or arrest is so lacking in indicia of probable cause as to render his belief in its existence unreasonable. Malley v. Briggs, 475 U.S. at ____; 89 L.Ed.2d 271, 281. Similarly, the officer is entitled to summary judgment on qualified immunity grounds if he can establish as a matter of law that a reasonable officer could have believed the search or arrest to be lawful, in light of clearly established

law and the information the officer possessed at the time. Anderson v. Creighton, 55 U.S.L.W. at 5093.

The actions of the police officers in detaining Brewster clearly meet the objective reasonableness standard and entitle them to summary judgment. A reasonable officer not only could have, but would have believed that the detention was lawful in light of established law and the information that the police officers possessed at the time. The officers knew that the magistrate had summoned them because Brewster had threatened to commit suicide, and that a written detention order would be issued. They knew that an emergency existed in that Brewster could injure or kill himself if they did not comply with the magistrate's order. Under Virginia law, the magistrate had

the authority to order Brewster's detention for up to seventy-two hours on his own motion based upon probable cause. Va. Code § 37.1-67.1 (1984).[4/] A reasonable officer would not believe that temporarily detaining a suicidal individual for a mental evaluation under these circumstances would violate his constitutional rights.[5/] The police

---

4/ The Virginia statute regarding civil mental temporary detention orders that was in effect at the time that Brewster was admitted to the Mount Vernon Hospital is codified at Va. Code § 37.1-67.1 (1984). The current version of this statute can be found at Va. Code § 37.1-67.1 (Supp. 1987). The statute has been amended since this action was filed in minor respects which are not germane to this action.

5/ In order to overcome the qualified immunity to which Gideon and Moore are entitled, Brewster must show that they violated a clearly established constitutional right. Anderson v. Creighton, 55 U.S.L.W. at 5093. Brewster argues at

(continued on next page)

officers' actions in detaining Brewster were reasonable. Therefore, they cannot be held liable under 42 U.S.C. § 1983. See McKinney v. George, 726 F.2d 1183 (7th Cir. 1984); Harris v. Pirch, 677 F.2d 681 (8th Cir. 1982).

Brewster argues that the original order under which he was detained was oral rather than written and that this violates Virginia law. In fact, the

---

5/ (continued)
length that any civil commitment of the mentally ill is per se unconstitutional, but cites no authority in support of that claim. This Court has previously ruled on the constitutionality of various aspects of civil commitment. See, e.g., Youngberg v. Romeo, 457 U.S. 307 (1982); Addington v. Texas, 441 U.S. 418 (1979); O'Connor v. Donaldson, 422 U.S. 563 (1975). It has never ruled that civil commitment is per se unconstitutional. Therefore, Brewster has not demonstrated that the actions of the police officers violated a clearly established constitutional right.

statute under which the detention order was issued does not specifically require that such orders be in written form. Va. Code § 37.1-67.1 (1984). The general orders of the Fairfax County Police Department not only authorize but require officers to detain individuals upon receipt of an oral order of a magistrate. Moreover, the officers were advised that the magistrate would issue a written detention order, and in fact a written order was issued a few hours later.

In any event, even if the conduct of the officers constituted a technical violation of Virginia law, their actions do not rise to the level of a constitutional violation. The Constitution requires only that police officers have

probable cause to detain an individual. It is immaterial to the constitutionality of their conduct that the detention may have violated state law. McKinney v. George, 726 F.2d 1183 (7th Cir. 1984) (police officers who seized plaintiff and transported him to mental hospital upon probable cause but in violation of state law are immune from liability under 42 U.S.C. § 1983). See also Davis v. Scherer, 468 U.S. 183, 194 (1984) (state officials do not lose their qualified immunity from suit under 42 U.S.C. § 1983 merely because their conduct violates state statutes or regulations).

The motion for summary judgment and supporting affidavits filed in the district court by Gideon and Moore

clearly established that the police officers acted in good faith. In order to avoid summary judgment, Brewster could not rest upon the mere allegations of his pleadings. He was required to set forth, by affidavit or other permissible means, specific facts to demonstrate the existence of a genuine issue for trial. Fed. R. Civ. P. 56(e). Brewster failed to do so. In fact, he failed even to file an opposing affidavit in support of his opposition to the motion for summary judgment.

The reason is obvious. There were no facts that Brewster could have mustered to avoid summary judgment. Brewster's own Complaint demonstrates that the police officers were entitled to good faith immunity. Brewster, himself, alleges that when the police

officers detained him, they were "acting upon orders of a magistrate...." Complaint, para. 36. Brewster's real grievance is with the magistrate, not with Gideon and Moore. He contends that the magistrate misconstrued his statements on the telephone as a suicide threat. Even if this were true, it is irrelevant. The police officers were told that Brewster had threatened to commit suicide, and they had no reason to disbelieve that report. In light of the undisputed fact that the police officers were acting on the orders of a magistrate, there was no genuine issue for trial and the district court correctly granted summary judgment in favor of Gideon and Moore.

II. THE ACTIONS OF THE POLICE OFFICERS WERE NOT THE PROXIMATE CAUSE OF THE INJURY BREWSTER ALLEGEDLY SUFFERED DURING HIS HOSPITALIZATION.

The district court correctly found that the actions of the police officers in detaining Brewster were not the proximate cause of the subsequent injury that he allegedly suffered during his hospitalization. (App. B.) The officers merely delivered Brewster to the hospital for evaluation. Upon completion of the evaluation, the health care providers independently decided to subject Brewster to a course of medication and treatment. The actions of the health care providers, and not the police officers, were the proximate cause of the injury that Brewster allegedly suffered as a result of that medication

and treatment. Therefore, Gideon and Moore were entitled to summary judgment in their favor on that issue. See Martinez v. California, 444 U.S. 277 (1980) (murder victim's death too remote a consequence of parolee's release to hold state parole officials liable under 42 U.S.C. § 1983).

CONCLUSION

The district court correctly determined that Gideon and Moore were immune from liability under 42 U.S.C. § 1983 and that their actions were not the proximate cause of the injury that Brewster allegedly suffered during his hospitalization. The police officers were entitled to summary judgment in their favor and Brewster's petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

David T. Stitt
County Attorney

Robert Lyndon Howell
Senior Assistant County
Attorney
4100 Chain Bridge Road
Fairfax, Virginia 22030
(703) 691-2421
Counsel for Respondents
Gideon and Moore

PROOF OF SERVICE

I hereby certify that three copies of the foregoing were mailed, postage prepaid, to George Brewster, pro se, 3407 Wessynton Way, Alexandria, Virginia 22309, Petitioner, and to John J. Brandt, Esquire, Slenker, Brandt, Jennings & Jennings, 3026 Javier Road, Fairfax, Virginia 22030, Randolph D. Frostick, Esquire, Miles and Stockbridge, 4096 Chain Bridge Road, Fairfax, Virginia 22030, and George A. McAndrews, Esquire, Gary A. Godard & Associates, 3975 University Drive, Fairfax, Virginia 22030, counsel for Respondents, this 14th day of August, 1987.

Robert Lyndon Howell
Robert Lyndon Howell

APPENDIX A

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

U.S. DEC 23 1985

GEORGE BREWSTER	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 85-0847-A
	)	
THE MOUNT VERNON HOSPITAL, et al.	)	
	)	
Defendants.	)	

ORDER

For reasons stated in open court, it is accordingly

ORDERED:

(1) that Defendants Gideon's and Moore's Motion for Summary Judgment be, and the same hereby is, GRANTED;

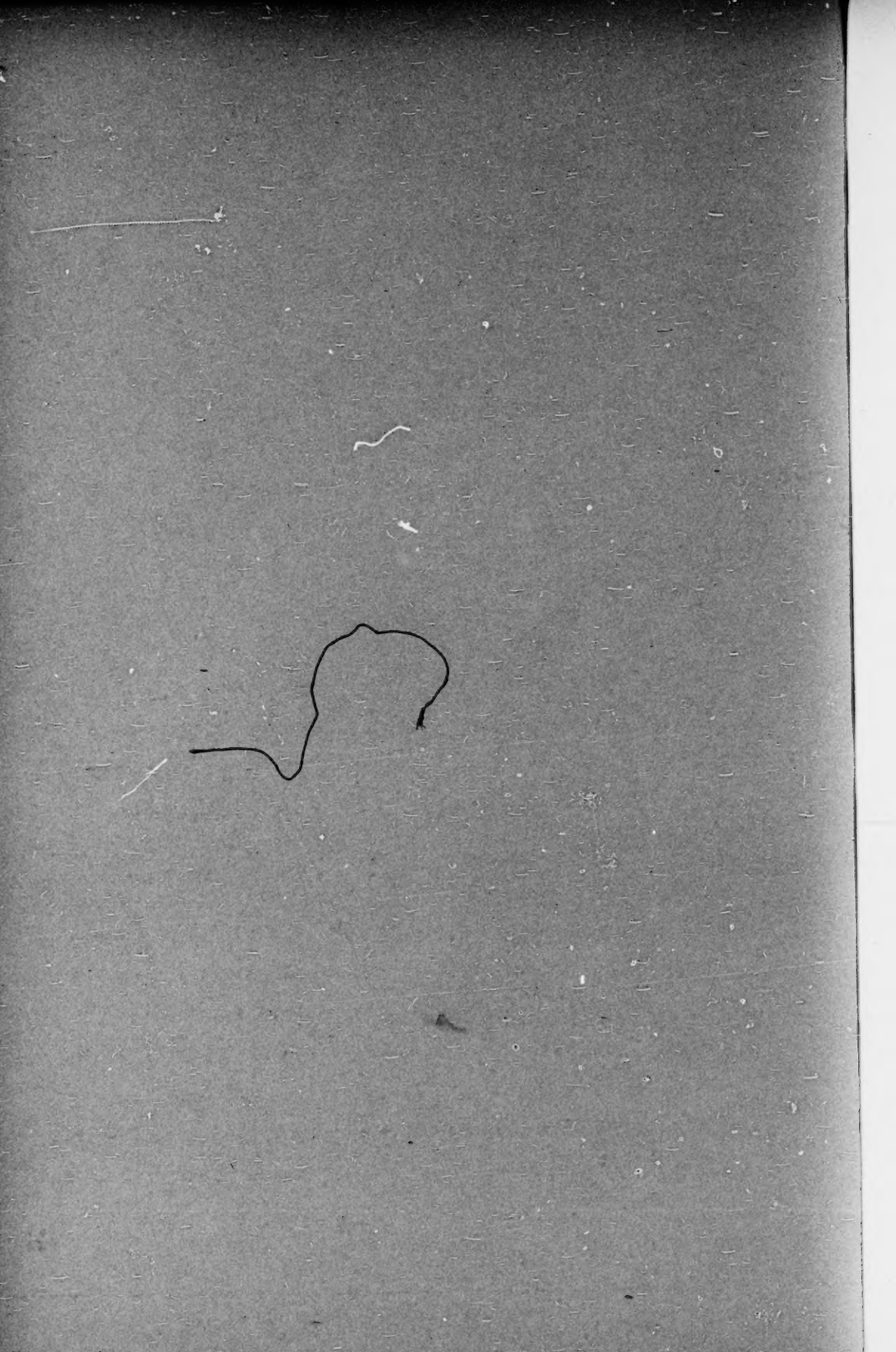
(2) that the Clerk shall forward certified copies of this Order to all counsel of record.

December 20, 1985
Alexandria, Virginia

United States District Judge

A True Copy
Teste: Fairfax Towers, Clerk
Ruth Wardman

APPENDIX B



THE COURT: Okay. Let me just say, I think I've read Wilson's affidavit. I'm going to assume Moore's is signed and what it indicates is that they were acting under the authority of the magistrate at the time they picked up Mr. Brewster. And this is a civil rights action pursuant to 42 U.S.C. Section 1983.

There are other allegations of false arrest and malicious prosecution. Certainly those claims are barred by the one year statute of limitations.

That brings us back to the 42 U.S.C. 1983 and the argument is, on the part of plaintiff, or his allegation, that he was kept in the hospital against his will, forced to take drugs in violation of his religious belief for which he seeks compensatory and punitive

damages against the officer.

The plaintiff claims compensatory and punitive damages for state law false arrest violations, constitutional deprivations. And the two persons now left are Gideon and Moore. The Court is satisfied that Gideon and Moore were acting as officers under the general order pursuant to what the oral order of the magistrate told them and so they have some qualified immunity as to the fact that they were acting on the basis of what they were told.

I think that the religious claim can be taken care of by the fact that anything that happened at the hospital would break the chain and that causation. The Court feels that the statute that they were acting under would give them good faith immunity.

And the case of Thompson v. Prince William is a strong case. It happened in this court where they arrested the wrong person. And the officers in that, on a warrant, arrested the wrong person. He was a different weight and height from the person they should have arrested. And summary judgment was granted in that one. Also Thompson v. Prince William is 753 Fed. 2nd 363, Fourth Circuit, 1985.

I think McInney versus Warden is also strong authority to grant the motion, 726 Fed. 2nd 1183.

The Court feels that the good faith immunity and acting under the authority of the statute and the magistrate would -- that they detained these plaintiff under reasonable reliance. On that basis, I'm going to grant the motion.

MR. GORDON: Thank you, Your Honor.

(Whereupon, at 10:25 a.m. the proceedings in the above-entitled matter was concluded.)

APPENDIX C

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 86-2002

George Brewster,

Appellant,

versus

John Doe, No. 1; John Doe, No. 2; Linda Anderson, The Mount Vernon Hospital, Burlington MaGuire, M.D.; Robert H. Robertson, M.D.; Nooreddin Mirmairani, M.D.; Anne Fortescue; Jill Inskeep; Bernadette Lester; Robert W. Gideon; William A. Moore; David A. Hetzer; Jose Aunon; Millie Wright; Sarah Fogelson; Linda Anderson and Donald Burlington, M.D.,

Appellees.

No. 86-2012

George Brewster,

Appellant,

versus

John Doe, No. 1, John Doe, No. 2, Linda Anderson, The Mount Vernon Hospital, Burlington MaGuire, M.D., Robert Robertson, M.D., Nooreddin Mirmairani, M.D., Anne Fortescue, Jill Inskeep, Bernadette Lester, Robert W. Gideon, William A. Moore, David A. Hetzer, Jose Aunon, Millie Wright, Sarah Fogelson, Donald Burlington, M.D.,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, District Judge. (C/A 85-847-A)

Argued: January 6, 1987 Decided: March 19, 1987

Before HALL and WILKINSON, Circuit Judges, and HAYNSWORTH, Senior Circuit Judge.

Ralph L. Payne on brief for appellant; John J. Brandt (Robert S. Corish; Slenker, Brandt, Jennings & Jennings) Robert Lyndon Howell, Senior Assistant County Attorney (David T. Stitt, County Attorney; Randolph D. Frostick; Miles & Stockbridge; George A. McAndrews; Gary A. Godard & Associates on brief) for appellees.

PER CURIAM:

George Brewster appeals from the district court's order granting the defendants' motion for summary judgment and their motion to dismiss this action brought pursuant to 42 U.S.C. § 1983. We affirm.

I.

On July 23, 1983, Brewster, a 46 year-old resident of Fairfax County, Virginia, telephoned a Fairfax County magistrate and asked that a pending indecent exposure charge filed against him in the federal district court be dropped. During the conversation, appellant threatened to harm himself and stated that he was very depressed. Moments later, the magistrate orally directed the Fairfax County police to pick up Brewster at his home and transport him to the nearby Mt. Vernon Community Mental Health Center ("Mt. Vernon") for a mental evaluation.[1] The police officers carried out the order. Brewster was subsequently kept under observation at Mt. Vernon for three days and was diagnosed as a chronic schizophrenic. On July 26, 1983, Brewster was released.

In July, 1985, appellant filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that he was denied due process of the law by police officers who detained him by transporting him involuntarily to Mt. Vernon. Brewster also contends that the health care providers practicing there, who kept and

---

[1] The magistrate's oral order was followed several hours later by a written detention order.

treated him against his will denied him due process. The district court granted the police officers' motion for summary judgment and dismissed Brewster's claim against Mt. Vernon and the health care providers finding no state action. This appeal followed.

II.

On appeal, Brewster contends that the district court erred in granting the police officers' motion for summary judgment based upon their good faith reliance upon the magistrate's order. Appellant also argues that Mt. Vernon and the health care providers are state actors because (1) Mt. Vernon receives federal funds, (2) the health care providers exercised a duty reserved to the state when it detained appellant against his will, and (3) the health care providers were paid by the state. We disagree with all of these contentions.

Brewster suggests that the police officers violated his due process rights by carrying out a judicial order in good faith which he argues was issued without proper jurisdiction. Even assuming the order is invalid, we find no merit in this contention. We have held that due process is not violated by police officers who rely upon an order in good faith which is subsequently determined to be invalid. Thompson v. Prince William County, 753 F.2d 363 (4th Cir. 1985). We have also held that receipt of federal funds does not transform a private hospital into a state actor, Nodaber, M.D. v. Culpeper Memorial Hospital,

672 F.2d 1023 (1982). Nor will participation in detention proceedings make a health care provider a state actor. Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980). Finally, we reject appellant's assertion that physicians who are compensated by the state are state actors even though they earn the bulk of their compensation from private practice. Calvert v. Sharpe, 748 F.2d 861 (4th Cir. 1984).

III.

For the foregoing reasons, we accordingly affirm.

AFFIRMED